

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

	)	Case No. 11-6198 SC
	)	
MACY'S, INC. and MACYS.COM,	)	ORDER RE: DEFENDANT'S MOTION
INC.,	)	<u>FOR ADMINISTRATIVE RELIEF</u>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
STRATEGIC MARKS, LLC,	)	
	)	
Defendant.	)	
	)	
	)	

Now before the Court is Defendant Strategic Marks, LLC's ("Defendant") motion for administrative relief, asking that the Court "quickly clarify its February 25, 2013 Order [ECF No. 73 ("February 25 Order")] continuing the trial date," in order to answer "whether the Court also extended the deadline for the parties to exchange expert reports (the "Expert Report Deadline") by virtue of the February 25 Order." ECF No. 82 ("Mot").

Plaintiffs Macy's, Inc. and Macys.com, Inc. ("Plaintiffs") oppose this motion. ECF No. 84 ("Opp'n"). Plaintiffs argue that while the Court has, on several occasions, altered the trial schedule per the parties' wishes, the Court has never modified the original May 4, 2012 Order's statement (ECF No. 41 ("May 4 Order"))

1 at 2) that the Expert Report Deadline is governed by Federal Rule  
2 of Civil Procedure 26, which sets that deadline at ninety days  
3 before the date set for trial. See Opp'n at 2-5; Fed. R. Civ.  
4 Proc. 26(a)(2)(D)(ii). Thus, according to Plaintiffs, since the  
5 February 25 Order set the trial date for July 23, 2013, Rule 26  
6 sets the Expert Report Deadline at April 24, 2013. Opp'n at 1.

7 Plaintiffs are correct. While none of the parties'  
8 stipulations or the Court's scheduling orders has specifically set  
9 a date for the Expert Report Deadline, the May 4 Order states both  
10 that Rule 26 governs expert witnesses and that the May 4 Order will  
11 continue to apply regardless of future continuances, absent some  
12 stipulation or intervening order. May 4 Order at 1, 2. Indeed,  
13 Defendant appears to have understood on an earlier occasion that  
14 after the Court granted a continuance on August 24, 2012 to set the  
15 trial date for April 22, 2013 (ECF No. 47), the Expert Report  
16 Deadline was set for January 22, 2013 per Rule 26. See Mot. at 2  
17 (citing the parties' correspondence on this topic).

18 Rule 26 sets the Expert Report Deadline at ninety days before  
19 the trial date. The trial date has moved several times since this  
20 action's inception, but it is now July 23, 2013, and by the terms  
21 of Rule 26, the Expert Report Deadline remains set for April 24,  
22 2013.

23  
24 IT IS SO ORDERED.

25  
26 Dated: April 17, 2013



UNITED STATES DISTRICT JUDGE